

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

IN RE:

BILL HEARD ENTERPRISES, INC., et al.,¹

Debtors.

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Chapter 11

Case No. 08-83029-JAC-11

**ORDER AUTHORIZING EMERGENCY JOINT MOTION FOR ORDER
AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING ON A
SECURED BASIS PURSUANT TO 11 U.S.C. §§ 105, 361, AND 364**

This matter came before the Court on September 29, 2008 for a preliminary hearing (the "Preliminary Hearing") on the Emergency Joint Motion of Bill Heard Enterprises, Inc. ("Heard") and Heard's direct and indirect subsidiaries listed in footnote 2 (the "Debtors"), and GMAC, LLC ("Lender," and together with the Debtors, collectively, the "Movants"),² seeking an Order Authorizing Debtors to Obtain Post-Petition Financing on Secured Basis Pursuant to 11 U.S.C.

¹ In addition to Bill Heard Enterprises, Inc., the Debtors include the following entities: (i) Bill Heard Chevrolet Company, (ii) Tom Jumper Chevrolet, Inc., (iii) Bill Heard Chevrolet, Inc. - Huntsville, (iv) Landmark Chevrolet, Ltd., (v) Bill Heard Chevrolet, Ltd., (vi) Bill Heard Chevrolet Corporation Nashville, (vii) Bill Heard Chevrolet Corporation - Orlando, (viii) Bill Heard Chevrolet, Inc. - Union City, (ix) Bill Heard Chevrolet at Town Center, LLC, (x) Bill Heard Chevrolet, Inc. - Collierville, (xi) Bill Heard Chevrolet, Inc. - Scottsdale, (xii) Bill Heard Chevrolet, Inc. - Plant City, (xiii) Bill Heard Chevrolet, Inc. - Buford, (xiv) Bill Heard Chevrolet Corporation - Las Vegas, (xv) Bill Heard Chevrolet Corporation - N.W. Las Vegas, (xvi) Twentieth Century Land Corp., (xvii) Enterprise Aviation, Inc., (xviii) Century Land Corporation, (xix) Century Land Company - Tennessee, (xx) Bill Heard Management, LLC, (xxi) Landmark Vehicle Mgt., LLC, (xxii) Georgia Services Group, LLC, and (xxiii) Columbus Transportation, LLC.

² Bill Heard Chevrolet Corporation - Orlando; Bill Heard Enterprises, Inc.; Bill Heard Chevrolet at Town Center, LLC; Bill Heard Chevrolet Company; Tom Jumper Chevrolet, Inc.; Bill Heard Chevrolet - Huntsville; Bill Heard Chevrolet, Inc. - Collierville; Bill Heard Chevrolet, Inc. - Buford; Landmark Chevrolet, Ltd.; Bill Heard Chevrolet Corporation - Las Vegas; Bill Heard Chevrolet Corporation - N.W. Las Vegas.

§§ 105, 361 and 364(d)(1) (the "Motion"), and upon due and proper consideration thereof, and having considered the statements of counsel and evidence presented at the Preliminary Hearing and the applicable law, and it appearing that the relief requested in the Motion is in the best interests of Debtors, their estates and creditors, and that such relief is essential for the continued operations of Debtors' businesses; and it further appearing that pursuant to 364(d), Debtors are unable to obtain post-petition financing in the form of (1) unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense, (2) unsecured credit allowable under §§364(a) and (b) of the Bankruptcy Code, or (3) credit secured by liens on the Debtors' assets junior to the liens of the Debtors' pre-petition secured lenders, or other secured financing on terms equal to or more favorable than those set forth in the DIP Financing Documents, and upon the record herein; and after due deliberation thereon; and sufficient cause appearing therefore, **IT IS HEREBY FOUND, DETERMINED, ORDERED, ADJUDGED, AND DECREED THAT:**³

1. On September 28, 2008 (the "Petition Date"), Debtors filed Voluntary Petitions under Chapter 11 of the Title 11 United States Code (the "Bankruptcy Code"). Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, Debtors are continuing to operate their business and manage their properties and assets as debtors in possession.

2. The Motion is brought pursuant to 11 U.S.C. §§ 105, 361 and 364(d)(1) and Rule 4001(d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Federal Rules of Bankruptcy Procedure 7052.

3. The Motion is granted pursuant to the terms of this Order. Any objections to the relief sought in this Motion that have not previously been resolved or withdrawn are hereby overruled on their merits, except as set forth herein. This Order shall be valid, binding on all parties-in-interest and fully effective immediately upon entry.

4. After substantial negotiations, Debtors and Lender have agreed to enter into a Loan Agreement (the "Loan Agreement"), whereby Lender will make a new loan to Debtors, (the "DIP Loan"), for Debtors' use during the pendency of the Bankruptcy Case pursuant to the terms and requirements of the Loan Agreement and the budget (the "Budget") attached thereto. The Loan Agreement will be substantially in the form attached hereto as Exhibit "A," and the terms and conditions of the Loan Agreement are expressly incorporated herein by reference and shall govern the DIP Loan. Capitalized terms not defined herein have the meaning assigned to them in the Loan Agreement. The promissory note to be executed by Debtors to effect the terms of the Loan Agreement (the "Promissory Note"), will be substantially in the form attached hereto as Exhibit "B" and is expressly incorporated herein by reference. The Budget will be substantially in the form attached hereto as Exhibit "C" and is expressly incorporated herein by reference.

5. The DIP Loan shall be in the amount of Five Million Four Hundred Thirteen Thousand Seven Hundred Seventy Seven Dollars (\$5,413,777.00), with interest compounding monthly at a rate per annum equal to prime plus 4%. The term of the DIP Loan, as described in detail in Article V of the DIP Loan Agreement, will commence on the date of the entry of this Interim Financing Order, and end when all Obligations (as defined in the Loan Agreement) under the Loan Agreement are satisfied and paid in full, subject to the limitations and restrictions set forth in the Loan Agreement.

6. The DIP Loan proceeds shall be used by Debtors in accordance with the terms of the Loan Agreement and the Budget, as described in detail in Articles I and III of the Loan Agreement.

7. Debtors have an immediate need for financing pursuant to the Loan Agreement. The Loan Agreement will allow Debtors to continue to finance its orderly liquidation and the wind down of its affairs for the benefit of the relevant estates. Without immediate authority to obtain financing on the terms and conditions set forth in the Agreement, Debtors will be unable to meet the costs and expenses attendant to winding down in an orderly fashion. This wind-down will maximize distributions to creditors, and the failure to wind down in an orderly fashion could cause immediate and irreparable harm to Debtors' bankruptcy estates.

8. Pursuant to 364(d), Debtors are unable to obtain post-petition financing in the form of (1) unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense, (2) unsecured credit allowable under §§364(a) and (b) of the Bankruptcy Code, or (3) credit secured by liens on the Debtors' assets junior to the liens of the Debtors' pre-petition secured lenders.

9. The Debtors investigated, but were unable to locate, alternate financing, and the Debtors believe that financing is not available from other sources on equally favorable terms. The Loan Agreement is therefore the most efficient, least expensive mechanism available to meet Debtors' immediate short term needs. Accordingly, the Court finds that the Loan Agreement is Debtors' best source of post-petition financing, is fair and reasonable, is in the best interests of Debtors, Debtors' estates, and Debtors' creditors.

10. The Loan Agreement results from the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitutes a transaction for reasonably equivalent and fair consideration.

11. Debtors and GMAC negotiated the Loan Agreement in good faith and at arms-length.

12. To preserve the value of Debtors' assets and Debtors' ability to manage its estates for the benefit of creditors and other parties in interest, Debtors have requested authorization to obtain financing under the Loan Agreement on a preliminary basis as necessary to avoid immediate and irreparable harm to the estates pending a final hearing on the Motion. Debtors propose to obtain financing from Lender under the DIP Loan prior to a final hearing and entry of a final order approving same only to the extent necessary to meet their cash requirements of the Budget. As set forth above, the amount of financing proposed in the Loan Agreement reflects borrowing only for adequate amounts necessary to satisfy the Debtors' minimum cash and credit needs to liquidate their business in an orderly fashion and avoid immediate and irreparable harm to their estates pending a final hearing. Accordingly, approval of the Loan Agreement on an interim basis pending a final hearing is in the best interests of Debtors, Debtors' estates and Debtors' creditors.

13. The Court hereby authorizes the Debtors to obtain credit pursuant to the Loan Agreement as necessary to avoid immediate and irreparable harm.

14. The Court hereby further authorizes Debtors (i) to execute and deliver all instruments, agreements, assignments and other documents referred to therein or requested by Lender to give effect to the terms of the Loan Agreement (the "Loan Documents"); (ii) to obtain the DIP Loan and to incur any and all liabilities and obligations thereunder; and (iii) to perform

the obligations thereunder in accordance with the terms thereof. Debtors will obtain the DIP Loan under the terms of the Loan Documents.

15. Nothing contained in this Order shall be construed to require Lender to make any advances to the Debtors under the DIP Loan, and any and all advances that Lender shall make or procure shall be in such amounts and made at such times as Lender may determine pursuant to the DIP Loan Documents. Lender may, in its discretion, terminate the DIP Loan Documents at any time in accordance with the terms thereof.

16. All payments under the DIP Loans and other Post-Petition Debt shall be due and payable, and will be paid, as and when provided in the DIP Loan Documents.

17. As provided for in Article VI of the Loan Agreement, the DIP Loan shall be secured by a replacement lien to the Lender in the same collateral and to the same extent and priority as Lender held prepetition.

18. As provided in Section 13.21 of the Loan Agreement, the Lender shall be granted an administrative expense claim against each Movants' estate to the extent that that any DIP Loan Advances were made to that specific entity.

19. Debtors shall execute and deliver to Lender all such agreements, financing statements, instruments and other documents as the Lender may request to effectuate, evidence, confirm, validate or perfect the security interests and liens provided for herein and granted pursuant to any DIP Loan Documents.

20. Debtors' funding needs, while critical and potentially threatening to the viability of the estates, are finite and very short term. Consequently, the benefit to the estates of the DIP Loan is one that is necessary to the Debtors' orderly liquidation, and provides imposition of

terms that, in comparison to the harm to the estates if such credit is not provided immediately, are minimally burdensome to the interests of all interested parties herein.

21. Based on the record before the Court, approval of the Loan Agreement is in the best interests of Debtors, Debtors' estate and Debtors' creditors. The Loan Agreement represents the most favorable terms under which Debtors can obtain financing necessary to continue operations and preserve the value of their estates for creditors. The Loan Agreement is fair and reasonable and represents the sound exercise of Debtors' judgment. The DIP Loan Agreement was negotiated in good faith between the parties at arms-length. Accordingly, the parties to the Loan Agreement are entitled to protections of Section 364(e) of the Bankruptcy Code.

22. Debtors shall be entitled to receive DIP Loan only on the terms of the Loan Documents. The proceeds of any such DIP Loan shall only be used in accordance with the Loan Agreement and the Loan Documents.

23. In making the decision to make the DIP Loan, administering the DIP Loan, and extending other financial accommodations to Debtors under the Loan Agreement or to collect the indebtedness and obligations of Debtor, Lender shall not be considered to be exercising control over any operations of Debtors or acting in any way as a responsible person, an owner or an operator under any applicable law, including without limitation, any environmental law (including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, as either may be amended from time to time, or any similar federal or state statute).

24. The Loan Documents and the provisions of this Order shall be binding upon Lender, Debtors and their respective successors and assigns, and shall inure to the benefit of Lender and Debtors and their respective successors and assigns including, without limitation, any

trustee, responsible officer, examiner with expanded powers, estate administrator or representative, or similar person appointed in a case for Debtors under any chapter of the Bankruptcy Code.

25. Except with respect to Lender, its delegates, successors and assigns, no rights are created hereunder for the benefit of any third party, any creditor or any direct, indirect or incidental beneficiary.

26. Each of the Loan Documents to which Debtors are and will become parties shall constitute legal, valid and binding obligations of Debtors, enforceable against Debtors in accordance with their terms. The Loan Documents have been or will be properly executed and delivered to Lender by Debtors. The rights, remedies, powers, privileges, liens and priorities of Lender provided for in this Order and in any other Loan Documents, shall not be modified, altered or impaired in any manner by any subsequent order in this case or in any subsequent case under the Bankruptcy Code, unless and until the indebtedness incurred under the Loan Agreement has first been paid in full in cash and completely satisfied and the Loan Agreement is terminated.

27. This Order is entered pursuant to section 364 of the Bankruptcy Code, granting Lender all protections afforded by section 364(e) of the Bankruptcy Code. If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, that action will not affect (a) the validity of any obligation, indebtedness or liability incurred hereunder by any of Debtors to Lender prior to the date of receipt by Lender of written notice of the effective date of such action, or (b) the validity and enforceability of any lien or priority authorized or created hereby or pursuant to the Loan Documents. Notwithstanding any such reversal, stay, modification or vacatur, any post-petition indebtedness, obligation or liability incurred by

Debtors to Lender prior to written notice to Lender of the effective date of such action, shall be governed in all respects by the original provisions of this Order, and Lender shall be entitled to all the rights, remedies, privileges and benefits granted herein and in the Loan Documents with respect to all such indebtedness, obligation or liability.

28. This Order shall not be construed in any way as a waiver or relinquishment of any rights that Lender may have to bring or be heard on any matter brought before this Court.

29. The notice given by Movants of the Hearing was given in accordance with Bankruptcy Rules 2002 and 4001(c)(2) and the local rules of this Court.

30. This Order shall take effect immediately upon execution hereof, notwithstanding the possible application of Fed. R. Bankr. P. 6004(g), 7062, 9014, or otherwise, and the Clerk of the Court is hereby directed to enter this Order on the Court's docket in this Chapter 11 Case.

DONE and ORDERED this day September 30, 2008

/s/ Jack Caddell
Jack Caddell
U.S. Bankruptcy Judge